

## ***De minimis* Rules and Guidelines**

§ 734.4 and Supplement No. 2 to part 734 of the EAR  
(as modified on 11 April 2018)

### **IF ...**

- Non-U.S.-made commodity ‘*incorporates*’ controlled U.S.-origin commodities,
- Non-U.S.-made commodity is ‘*bundled*’ with controlled U.S.-origin software,
- Non-U.S.-made software ‘*incorporates*’ controlled U.S.-origin software, or
- Non-U.S.-made technology is commingled with or drawn from controlled U.S.-origin technology,

### **THEN...** the non-U.S.-made item is *subject to the EAR* if the U.S.-origin ***controlled content*** exceeds (based on destination):

#### ➤ **10%**

- For non-“600 series,” non-9x515, non-‘see-through carve-out’<sup>1</sup> items to Country Group E:1; and
- For EAR99 items (except food and medicines) to N. Korea and Syria.

#### ➤ **25%**

- For .a-.x items, in “600 series” & 9x515, or ‘see-through carve-out’<sup>1</sup> items, except to Country Group D:5;
- For non-“600 series,” non-9x515, or non-‘see-through carve-out’<sup>1</sup> items, except to Country Group E:1; and
- For 0A919 commodities, except to Country Group D:5
- For EAR99 items to Cuba and Crimea region of Ukraine (except food, medicines and certain software).

#### ➤ **Unlimited (not subject to the EAR for *de minimis* purposes)**

- For .y items, in “600 series” or 9x515, except to Country Group E:1, E:2, China and Crimea region of Ukraine;
- For items controlled for (AT) reasons only, except to Country Group E:1 and E:2, and Crimea region of Ukraine (except certain software); and
- For EAR99 items to all locations, except where noted above.

### **EXCEPT #1 (DESTINATION BASED)**

- .a - .x items, in “600 series” & 9x515, or ‘see-through carve-out’<sup>1</sup> content, destined to Country Group D:5 (§ 734.4(a)(6)(i));
- .y items, in “600 series” & 9x515, destined to Country Groups E:1, E:2 or China (§ 734.4(a)(6)(i)); and

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<sup>1</sup> ‘*See-through carve-out item*’ - Articles described on the U.S. Munitions List (22 CFR part 121) that pursuant to a specific carve-out note are subject to the EAR when, prior to export, reexport, retransfer, or temporary import, they are integrated into and included as an integral part of an item subject to the EAR. These items are always considered controlled content for purposes of the *de minimis* rule.

- USML Category VIII (h)(3)-(5), (7), (14), (17) or (19) when incorporated into a 9A610 military aircraft
- USML Category XV (e) when incorporated into an item subject to the EAR
- USML Category XIX(d) when incorporated into a 9A610 military aircraft

- Non-U.S.-made military commodities that incorporate one or more of the commodities described in ECCN 0A919.a.1 when destined for a country listed in Country Group D:5 (734.4(a)(5)).

#### ✚ **EXCEPT #2 (U.S.-ORIGIN CONTENT BASED)**

- Technology controlled by ECCN 9E003.a.1 through a.8, .h, .i, and .j, when redrawn, used, consulted, or otherwise commingled abroad (§ 734.4(a)(4));
- Certain components of high performance computers (§ 734.4(a)(1)); and
- Encryption 5E002 (§734.4(a)(2)), and encryption commodities and software that don't meet the eligibility criteria in § 734.4(b).

#### ✚ **ABOVE DESTINATION THRESHOLD OR INELIGIBLE FOR DE MINIMIS, NOW WHAT?**

- Classify the non-U.S.-made product (self-classification vs BIS classification)
- Determine License Requirements to export destination of non-U.S. made product
- Determine License Exception eligibility
- Obtain any necessary authorization

For additional guidance



## ADDITIONAL GUIDELINES

### ❖ **Controlled Content**

- **U.S.-origin items that require a license or License Exception to the ultimate destination of the non-U.S.-made product**
  - ‘See-through carve-out items’ are always counted as controlled content; and
  - EAR99 items are considered “controlled content” for Cuba (E:2), N. Korea (E:1) (except food and medicines), Syria (E:1) (except food and medicines), and Crimea region of Ukraine (except food, medicines and certain software);
- **ECCN 0A919 “Military commodities” located and produced outside the United States that are not subject to the ITAR and have any of the following:**
  - Incorporate more than a *de minimis* amount of U.S.-origin controlled content classified under ECCNs 6A002, 6A003, 6A990, or 6A993.a (having a maximum frame rate equal to or less than 9 Hz and thus meeting the criterion of Note 3.a to 6A003.b.4);
  - Incorporate more than a *de minimis* amount of U.S.-origin “600 series” controlled content (see §734.4 of the EAR)
  - Are direct products of U.S.-origin “600 series” technology or software (see § 736.2(b)(3) of the EAR)
- **U.S.-origin content that is not considered controlled content for *de minimis* calculations**
  - Items eligible for License Exception GBS;
  - Items that do not require a license to the ultimate destination of the non-U.S. made product (NLR designated items); and
  - Items subject to Short Supply (SS) controls.

### ❖ **Fair Market Value of the controlled content is needed to calculate *de minimis* percentage.**

### ❖ **When determining controlled content, only factor in the destination country.**

- End use and end user license requirements are not relevant when determining “controlled content.”
- If your non-U.S. item is subject to the EAR pursuant to the *de minimis* rules, then all of the EAR policies must be considered.

### ❖ **U.S. items are 'incorporated' when all of the following conditions are met:**

- They are essential to the functioning of the non-U.S.-made equipment;
- They are customarily included in the sale of non-U.S.-made items; and
- They are exported abroad with the non-U.S.-made item.

### ❖ **Bundled**

- Software that is configured for a specific commodity, but is not necessarily physically integrated into the commodity.
- Eligible software is software that is listed on the Commerce Control List (CCL) and is controlled for anti-terrorism (AT) reasons or software that is designated EAR99 (subject to the EAR, but not listed on the CCL).

### ❖ **One-time report required for technology (not commodity or software) and should include:**

- Percentage of U.S. content by value
- Description of your calculations
- Values, assumptions, methodologies
- Export price of U.S. content
- Description and fair market value of the non-U.S.-made technology